IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.3.2007

CORAM:

THE HONOURABLE MR.JUSTICE DHARMARAO ELIPE
AND
THE HONOURABLE MR.JUSTICE S.PALANIVELU

WRIT APPEAL No.2228 OF 2000

K.P.Subramaniam ... Appellant/Petitioner

Vs.

1.The Management of Ashok Leyland Ltd.,
Ennore, Madras.

2.The Presiding Officer,
III Additional Labour Court,
Madras ... Respondents/Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent against the Order of this Court dated 7.8.1998 made in W.P.No.15389 of 1989.

WP.15389/89 : This Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the 2nd respondent in I.D.654 of 1984 and to quash the award passed by the 2nd respondent 23.05.1989 and published in the gazette.

For appellant : Mr.V.Prakash, Senior Counsel for
Mr.M.Ramamurthi
For R.1 : Mr.Sanjay Mohan, Senior Counsel for
M/s.Ramasubramaniam Associates

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JUDGMENT

(Judgment of the Court was delivered by DHARMARAO ELIPE, J.)

Aggrieved by the Order of the learned single Judge of this Court dated 7.8.1998 made in W.P.No.15389 of 1989, this Appeal has been preferred by the appellant/writ petitioner.

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2. The appellant herein studied upto 7th standard and joined the 1st respondent Management in the year 1955 as an unskilled worker. Thereafter, the appellant/petitioner was promoted as Maintenance Engineer and on 20.3.1984, he was terminated from his services and a cheque for Rs.1,995/- towards his one month's salary was also sent to him. Thereafter, by the letter dated 23.3.1984, the appellant/petitioner disputed his termination and also returned the cheque sent by the Management further requiring to reinstate him in service immediately with continuity of service and treat the period of absence since 21.3.1984 as one on leave. The said request of the appellant/petitioner was turned down by the 1st respondent Management on the ground that as per the conditions of service, the Management is not bound to give any reason and that the services of the appellant/petitioner are liable for termination. It was also informed by the Management that they have ceased to repose confidence in the appellant/petitioner on account of his activities involving the issuance of circular to executives and that his continued presence in the company will not be in the interest of the company.

3. Aggrieved, the appellant/petitioner raised an industrial dispute in I.D.No.654 of 1984 before the Labour Court, praying to hold his non-employment as illegal and reinstate him with continuity of service and full back wages. The 1st respondent Management filed a counter stating that the appellant/petitioner is not a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act and prayed to dismiss the claim petition filed by the appellant/petitioner.

4. The Tribunal, after conducting an enquiry, hold that the appellant/petitioner was working only in the supervisory capacity and as per exception (iv) to Section 2(s) of the Industrial Disputes Act he is not a 'workman' and dismissed the claim petition filed by the appellant/petitioner.

5. As against the said Award of the Tribunal, the appellant/petitioner filed W.P.No.15389 of 1989 before this Court. The learned single Judge, relying on Exs.M.3 to M.70, which are all break down requisition slips wherein the appellant/petitioner had signed as 'Maintenance Supervisor' and further relying on Exs.M.6, M.9, M.11, M.12 and M.77 wherein the appellant/petitioner had informed to the Management about the performance of various persons working under him and other particulars including his opinion as to their promotion, has dismissed the writ petition filed by the appellant/petitioner on the ground that he was holding only a managerial post. The learned single Judge also held that in the light of the overwhelming evidence with regard to the nature of work, it is unnecessary for him to refer to the decisions cited by the learned counsel for the appellant/petitioner since it is settled law that when the facts are clear and sufficient for arriving at a conclusion, there is no need to go for a decision. As against the said order of the learned single Judge, this Appeal has been preferred by the appellant/petitioner.

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6. The learned senior counsel for the appellant has contended that the the Labour Court has not applied the test as to what are the predominant duties of the appellant before holding him not a 'workman' within the meaning of Section 2 (s) of the Industrial Disputes Act. It is also contended that the learned single Judge failed to see that the Award of the Labour Court is perverse, inasmuch as in deciding the status of the appellant and the Labour Court ought to have exhaustively analysed the duties and responsibilities and the work done by the appellant/petitioner in the factory and after such analysis ought to have seen what are the predominant duties and responsibilities of the appellant and had the Labour Court gone through such an exercise, the reasonable conclusion that would have been possible is that the appellant is a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act.

7. The learned senior counsel for the petitioner/appellant further taking us through the materials placed on record, including the break down slips, has submitted that signing in the break down slips does not mean that the appellant/petitioner is attending the managerial works. The learned senior counsel for the petitioner/appellant would extensively argue on the point that supervising a work, does not mean that he is having control over the workers. To fortify his argument that the nature of the duties of the appellant/petitioner does not fall within the ambit of 'managerial post' but squarely and amply falls only within the meaning of 'workman' as defined under Section 2(s) of the Industrial Disputes Act, the learned senior counsel for the petitioner/appellant has relied on various decisions of the upper forums of law, including the Apex Court, which we will advert to infra.

8. On the contrary, the learned counsel for the 1st respondent/Management submitted that the Labour Court, after conducting a thorough enquiry and in proper appreciation of the materials placed on record, has arrived at the conclusion that the appellant is not a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act but was working only in the managerial capacity and the learned single Judge also, after analysing the entire case from proper perspective, has arrived at an irresistible conclusion that the appellant/petitioner is not a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, which needs only confirmation from this appellate forum since there is no need to interfere with the well reasoned findings of both the Labour Court and the learned single Judge. On such grounds, the learned senior counsel for the 1st respondent has prayed to dismiss the writ appeal. The learned senior counsel for the 1st respondent Management would strenuously submit that the decisions relied on by the appellant/petitioner are not at all applicable to the facts of the case and hence needs no consideration from this Court.

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9. In the light of the above submissions, the point that arises for consideration is 'whether the appellant/petitioner is a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act and if so, whether he is entitled to the relief sought for in the claim petition before the Labour Court?'

10. Section 2(s) of the Industrial Disputes Act defines the term 'workman' as follows:

> ""workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -
> (i) who is subject to the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957); or
> (ii) who is employed in the police service or as an officer or other employee of a prison; or
> (iii) who is employed mainly in a managerial or administrative capacity; or
> (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

11. It is the admitted case of both parties that as on the date of termination i.e. on 20.3.1984, the appellant/petitioner was working as a Maintenance Engineer, having joined the 1st respondent Management in the year 1955 as an unskilled Labour. In Paras 20 to 26 of the counter filed by the 1st respondent Management before the Labour Court, the functions of Maintenance Engineers are narrated as follows:

> "20. Maintenance Engineers are in charge of personal supervision of actual work performed by the various categories of workmen working under them and also to assess the performance of the workmen and recommend promotion, increments, etc. accordingly. Since the shop floor area is very large and in order to facilitate better supervision, they were given one Junior Executive under them to help in the supervision of the workmen. Whenever Junior Executives are not posted, the chargehands were to assist the supervision. Chargehands were promotees from the post of skilled higher workmen.

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21. In 1984, at the time of petitioner's termination from service, he was a Maintenance Engineer attached to shop V and one Junior Executive and six workmen were under his direct supervision. The general nature of work of MTR in Shop V are as follows: There were about 298 various types of machines in shop V, at the time of petitioner's termination in 1984. Some of the types of machines and their cost are as per Annexure III."

22. A sample of the nature of breakdown/repair/maintenance work that would arise on some of the machines are given in Annexure IV.

23. The actual physical work of repairing, replacing, servicing etc., of the machines were personally carried out by the workmen referred to above and not by any Maintenance Engineer or Junior Executive. Junior Executive's duties were to go round the shop floor and personally supervise to himself. In the course of supervision the Maintenance Engineer such as the petitioner was required to see that the workmen were actually carrying out their duties correctly and to the requirements of the machines and in respect of the nature of the breakdown or maintenance requirements.

24. The petitioner having a fair understanding as to the nature of work to be performed, allocate the workmen who were posted under him namely six workmen along with Junior Executive to attend to various types of work and would decide the priority in which they should be attended to.

25. As per practice, breakdown requisitions from the shop floor supervisors would be sent to the petitioner who would acknowledge them and allot any group out of these six workmen under him to attend to the jobs in question. During the course of the work, if any spare parts were required, he would assess the requirement and raise necessary requisitions for the same.

26. In view of the fact that he was supervising the entire workmen who do actual physical labour and also since he was in a best position to know the output of the workmen and conduct of those workmen, the petitioner was recommending annual increments and promotions for these workmen. He was also recommending absorption of certain casual employees into regular categories. The petitioner was also submitting attendance details of workmen under him to the central planning for effecting wage out etc."

12. The learned senior counsel for the 1st respondent/Management referred to some communications emanated from the appellant/petitioner to the 1st respondent, recommending increments to some of the employees and would submit that the appellant/petitioner was only in the 'managerial post' and hence falls within the exception clause (iv) of Section 2(s) of the Industrial Disputes Act and thus he is not a 'workman'. The learned senior counsel for the appellant/petitioner would pooh-pooh the said argument of the learned senior counsel for the 1st respondent Management on the ground that though the appellant/petitioner recommended increments

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etc., the power to take decision does not lie with him and it vests only with the Management and mere recommending does not mean that he is in the managerial post. The learned senior counsel for the appellant/petitioner would further submit that recommending persons for promotions or increments or to allocate work to some of the employees etc. are only incidental to the principal work of the appellant/petitioner and hence it cannot be said that he is not a 'workman' within the meaning of Section 2 (s) of the Industrial Disputes Act. To fortify his submissions, the learned senior counsel for the petitioner took us through the communications between the appellant/petitioner and the 1st respondent, wherein the recommendations of the appellant/petitioner were negatived by the 1st respsondent Management.

13. In ANANDA BAZAR PATRIKA (PRIVATE) LTD. vs. ITS WORKMEN [1969-II-LLJ 670], the Supreme Court has held:

> "The principle which should be followed in deciding the question whether a person is employed in a supervisory capacity or on clerical work is that if a person is mainly doing supervisory work but incidentally or for a fraction of the time also does some clerical work, it would have to be held that he is employed in supervisory capacity, and conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity.
>
> The facts, in the instant case, showed that the employee's principal work was maintaining and writing the cash book and preparing various returns. Being the senior-most clerk, he was put in charge of the provident fund section and was given a small amount of control over the other clerks working in his section. The only power he could exercise over them was to allocate work between them, to permit them to leave during office hours and to recommend their leave applications. These few minor duties of a supervisory nature, cannot, in our opinion, convert his office of senior clerk in charge into that of a supervisor. The labour court was, therefore, right in holding that Gupta was a workman on the date of his retirement and that an industrial dispute did, in fact, exist."

14. In LLOYDS BANK LTD vs. PANNA LAL GUPTA AND OTHERS [1961-I-LLJ 18], a Three Judge Bench of the Supreme Court has observed that 'the supervisor or officer should occupy a position of command or decision and should be authorized to act in certain matters within the limits of his authority without the sanction of the manager or the supervisors.' It was also held 'the designation of the employee is not decisive; what determines the status is a consideration of the nature and duties of the function assigned to the employee concerned...' It has further been held:

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"The checking up work is primarily a process of accounting and the use of the word "checking" could not be permitted to introduce a consideration of supervisory nature. The work of checking the authority of the person passing the voucher or to enquire whether the limit of authority has been exceeded is also no doubt work of a checking type but such checking is purely mechanical and it could not be said to include any supervisory function."

15. In ASHOK LEYLAND LTD. vs. A.VIJAYAKUMAR AND ANOTHER [1988-II-LLN 528], a Division Bench of this Court had the occasion to consider whether a Graduate Engineer working as a Development Officer in supply department of company taking orders from chief buyer of company is a 'workman'. The Division Bench, considering the fact that the petitioner therein was working only after taking orders from Chief Buyer of the company and is not in a position to take independent decisions, has held that he is a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act.

16. In ANAND REGIONAL CO-OP. OIL SEEDSGROWERS UNION LTD. vs. SHAILESHKUMAR HARSHADBHAI SHAH [2006-III-LLJ 767], the Apex Court observed that 'supervision contemplates direction and control and primary duties performed need to be ascertained'.

17. In S.B.KULKARNI vs. INDIAN RED CROSS SOCIETY AND OTHERS [1988-I-LLJ 411], a Division Bench of the Bombay High Court has held:

"It is not the designation but the nature of duties performed by or allocated to the post which have to be examined to find out whether the work is that of a supervisory character. To come to the conclusion that a person is working in a supervisory capacity, it is necessary to prove that there were atleast some persons working under him whose work he was required to supervise. The mere fact that a person is in charge of a section would not make him a supervisor if there was nobody else in the section whose work was to be supervised. A clerk who has been given the assistance of a peon cannot be said to be working in a supervisory capacity. ... It is necessary to prove that the person is working in a supervisory capacity or exercising supervisory powers to say that he is not a 'workman' within the meaning of Section 2(s) of the I.D.Act."

18. In the backdrop of the above legal position, now we have to see the nature of duties of the appellant/petitioner. As could be seen from the duties of the appellant/petitioner, narrated by the respondent in their counter, extracted supra, it is clear that allocation of work to the fellow workmen and recommending their promotions or increments are all only incidental to the principal technical work of the petitioner/appellant. Though it was the case of the 1st respondent Management that the appellant/petitioner was recommending the promotions

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or increments, as he did not decide matters and was obliged to work under three superior officers of him, viz. Manager, Assistant Manager and Superintendent, as has been narrated in the counter of the 1st respondent Management itself, and since the petitioner/appellant was not occupying a position of command or decision and was not authorized to act matters within the limits of his authority without the sanction of the Manager, Assistant Manager or the Supervisor, it cannot be said that the petitioner/appellant is in a decision taking position. In the absence of anything to show on record that the appellant/petitioner was occupying a position of command or decision and was authorized to act in certain matters within the limits of his authority without the sanction of his superiors viz. Manager, Assistant Manager or the Supervisor, as held by the Apex Court in Lloyds Bank Limited case cited supra, it cannot be said that the appellant/petitioner was in a managerial post.

19. As submitted by the learned senior counsel for the petitioner/appellant, though the appellant/petitioner recommended in certain matters the promotion/increment to some of his colleagues like one Mr.Prakash Rao, were not accepted by the Management, which would show that he was never in the decision taking process so as to say that he is in Managerial post. In this context, it is to be made clear that having put in more than thirty years of service, it is but natural that the appellant/petitioner was in a position to see or monitor whether the workmen were actually carrying out their duties correctly and to the requirements of the machines and in respect of the nature of the breakdown or maintenance requirement. This kind of checking of the work of the fellow workmen cannot be termed as in the nature of managerial post, as held by the Apex Court in Lloyds Bank Limited case cited supra. Further, by applying the principles enunciated by the Supreme Court in Anand Bazar Patrika case, cited supra, it can very well be held that the fact that the appellant was given a small amount of control over six fellow workmen, cannot take him away from the definition of 'workman'.

20. As rightly contended by the learned senior counsel for the petitioner, the learned single Judge, without going into the judgments relied on by the appellant, solely based on the findings arrived at by the Labour Court, had concluded that the appellant/petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act. Practically, both the Labour Court and the learned single Judge have not considered the issue involved in the matter with regard to the nature of duties performed by the appellant as to what are the principal duties of the appellant and whether he was having any control over the decisions of the 1st respondent Management. The principles laid down by the upper forums of law in the above cited judgments, to determine whether a person is a workman or not, have not been followed either by the Labour Court or by the learned single Judge. As seen from the facts and circumstances of the case and the principal and ancillary duties of the appellant/petitioner and applying the principles laid down by the upper forums of law in the above cited judgments, we are satisfied that the

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principal work of the appellant/petitioner is technical, whereas the incidental work is recommending promotions and grant of leave or increments to the fellow workmen and signing the break down slips. Further more, there are three posts above the post of Maintenance Engineer, which the appellant/petitioner is holding like Manager, Assistant Manager and Superintendent, to take policy decisions, as narrated by the 1st respondent Management in their counter. Therefore, applying the principles enunciated by the Division Bench of this Court in Ashok Leyland Limited case cited supra, since the petitioner/appellant was not in a position to take independent decisions, it cannot be said that he is not a workman. Therefore, we are unable to appreciate the reasons given by the Labour Court and the learned single Judge in holding that the appellant/petitioner is not a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act.

21. It is also made out by the appellant/petitioner that when he tried to form a Trust for the welfare of the employees and also issued a circular to all the staff members to that effect, the 1st respondent Management has taken a decision of terminating him, which is also clear from the letter addressed by the 1st respondent Management to the appellant/petitioner on 27.3.1984. No enquiry was also conducted by the 1st respondent Management and the stand of the Management that since the appellant/petitioner was not a workman, he was served with a termination order with one month's salary cannot be accepted because of our earlier finding that the appellant/petitioner is a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act. For this reason also, the termination order should be held bad and unsustainable in law. As stated supra, neither the Labour Court nor the learned single Judge have considered the case in its proper perspective, applying the principles enunciated by the upper forums of law. Therefore, this Writ Appeal is entitled to be allowed.

In the result, this Writ Appeal is allowed. The orders of the learned single Judge and the Labour Court are set aside. The appellant/petitioner is entitled for all salary and service benefits with continuity of service as if he has retired on attaining the age of superannuation. The 1st respondent/Management is directed to settle the above said terminal benefits, for which the appellant/petitioner is entitled to, within a period of three months from the date of receipt of a copy of this judgment. No costs.

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Rao

To

1. The Presiding Officer,
III Additional Labour Court,
Madras

2. The Section Officer,
V.R.Section, High Court, Madras

1 cc To M/S.Ramasubramanian and Associates, Advocate, SR.19182.

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